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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,273	06/22/2001	David W. Burns	2207/ 11315	8639

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EXAMINER

MEONSKE, TONIA L

ART UNIT	PAPER NUMBER
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2181

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/888,273	<b>Applicant(s)</b> BURNS ET AL.	
	<b>Examiner</b> Tonia L. Meonske	<b>Art Unit</b> 2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-18,20-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,9-11,15,17,18,23,25 and 26 is/are rejected.
- 7) ☒ Claim(s) 4-6,8,12-14,16,20-22,24 and 28-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**


- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

  
**FRITZ FLEMING**  
 Supervisory PRIMARY EXAMINER  
 GROUP 2100  
 442181  
 4/2/2006

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1,2,7,9-11,15,17,18,23, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Sager, US Patent 6,542,921 (herein referred to as Sager).

4. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action mailed on September 19, 2005.

### *Response to Arguments*

5. On pages 11-14, Applicant argues in essence:

*"Applicant respectfully submit that nowhere in Sager is the disclosure, teaching or suggestion of*

*I. "[a] method of assigning thread priority comprising: ...determining if there is an indication of approaching instruction side starvation for said first thread;*

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II. *and incrementing a value stored in said first starting counter in response to an indication of approaching instruction side starvation for said first thread*" (e.g., the embodiment as recited in amended claim 1).

...  
Applicants submit that the cited sections do not address *Iside starvation or incrementing values at all...*"

However, in response to I. above, Sager has taught "[a] method of assigning thread priority comprising: ...determining if there is an indication of approaching instruction side starvation for said first thread (abstract, Figure 11, element 1117, column 9, line 3-column 10, line 26). Sager has taught that when a thread of instructions has not made any progress during it's assigned priority time period (instruction side starvation), then the next time the thread executes it will be given a longer priority period to execute. Therefore this argument is moot.

Furthermore, in response to II. Above, Sager has also taught "*incrementing a value stored in said first starting counter in response to an indication of approaching instruction side starvation for said first thread*" (abstract, Figure 11, element 1121, column 9, line 3-column 10, line 26, column 13, lines 42-51). Sager has taught that when a thread has not made any progress during it's assigned priority time period (instruction side starvation), then the next time the thread executes it will be given a longer priority period to execute. TC0 is incremented to allow the thread to have a longer execution time. Therefore this argument is moot.

Applicant's arguments on pages 11 and 14 regarding I. and II. are of a general nature which merely broadly state that Sager has not taught instruction side starvation. If

Applicant would like some specific meaning of instruction side starvation read into the claims then applicant should specifically claim that meaning directly in the claims.

6. On pages 14-15, Applicant argues in essence:

*“nowhere in the disclosure, teaching or suggestion of “[a] method of assigning thread priority comprising...assigning priority to a second thread in response to one of a plurality of conditions being true, the conditions consisting of...if there is not an indication of approaching instruction side starvation for said first thread.” (e.g., the embodiment as recited in amended claim 7)”*

However, Sager has in fact taught “[a] method of assigning thread priority comprising...assigning priority to a second thread in response to one of a plurality of conditions being true, the conditions consisting of...if there is not an indication of approaching instruction side starvation for said first thread.” (Figure 9, elements 913 and 917) When the priority of the second thread is assigned in response to only the current priority period expiring, element 913, (i.e. when progress has been made during thread execution priority period) the condition is true that there is not an indication of approaching instruction side starvation for said thread. Therefore this argument is moot.

#### ***Allowable Subject Matter***

7. Claims 4-6, 8, 12-14, 16, 20-22, 24 and 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L. Meonske whose telephone number is (571) 272-4170.

The examiner can normally be reached on Monday-Friday, with every other Friday off.

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9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fritz Fleming can be reached on (571) 272-4145. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm

*Supervisory*  
*Fritz Fleming*  
FRITZ FLEMING  
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4/2/2006